IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6411 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JADEJA ANUPSINH PRATAPSINGH - Petitioner(s)
Versus
DISTRICT SUPERINTENDENT OF POLICE & 2 - Respondent(s)

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Appearance :
Mrs. SANGEETA PAHWA for the Petitioner
MR PATHIK ACHARYA, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 19/03/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioner was working as Constable, was pleased under suspension on 06.09.1993 on the ground that the criminal prosecution against him vide C.R.No.486 of 1993 under Sections 302,

323, 347, 148, 149 and 504 read with Section 135(1) was pending against him. It appears that as the trial was not concluded within some reasonable time, as per Government resolution dated 10.11.1994, the suspension was revoked on 08.03.1995 and he was taken on duty. Thereafter on 15.08.1996, the order came to be passed by the District Superintendent of Police once again placing him under suspension on the basis that vide Government resolution dated 19.08.1995, the earlier Government resolution dated 10.11.1994 providing for revocation of the suspension is revoked. The petitioner has preferred the petition under these circumstances before this Court challenging the said order of suspension.

2. Heard Mrs.Pahwa for the petitioner and Mr.Acharya, learned Assistant Government Pleader for the State authorities.

3. It appears that the principal contention raised o behalf of the petitioner is that the petitioner has been placed under suspension in view of the subsequent Government resolution dated 19.08.1995 revoking the earlier Government resolution. However, there is subsequent resolution of the Government dated 15.05.1996, whereby the earlier resolution dated 10.11.1994 is restored and the Government resolution dated 19.08.1995

revocation the earlier resolution dated 10.11.1994 is cancelled and the said Government resolution dated 15.05.1996 is not considered by the authority, which was already there at the time when the impugned order came to be passed on 15.08.1996.

4. Mr.Acharya, learned Assistant Government Pleader has placed on record the affidavit-in-reply filed on behalf of the respondent and in the said affidavit-in-reply, the position for cancellation of the Government resolution dated 19.08.1995 and the restoration of the Government resolution dated 10.11.1994 is confirmed and Mr.Acharya has not disputed the said position even as on today.

5. In view of the above, there cannot be any other conclusion then that the order passed on 15.08.1996, which is impugned in this petition, is in contravention to and without considering the Government resolution dated 15.05.1996, restoring the earlier Government resolution dated 10.11.1994 and consequently, the order can be said as arbitrary and without proper application of mind.

6. No other circumstances are brought to the notice of this Court by the respondent, which may warrant the suspension of the petitioner. It has been submitted by learned Assistant Government Pleader that the trial has

reached to the stage of conclusion inasmuch as, the witnesses are examined and the arguments are to be heard. The learned counsel appearing for the petitioner has stated that the petitioner will cooperate to the conclusion of the trial at the earliest.

7. Under the above circumstances, no further discussion may be required since the impugned order cannot be sustained in the eye of law. Hence, the impugned order of placing the petitioner under suspension is quashed and set aside.

However, it is clarified that present judgment and order shall not prejudice the rights of the authority to pass a fresh order, if any other ground known to law arise, either during the period after of suspension or at the conclusion of the trial. Rule is made absolute accordingly with no order as to costs.

(JAYANT PATEL, J.)

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